TITLE 326 AIR POLLUTION CONTROL DIVISION

Final Rule

LSA Document #17-395(F)

DIGEST

Amends <u>326 IAC 2-1.1-6</u>, <u>326 IAC 2-7-13</u>, <u>326 IAC 2-7-17</u>, <u>326 IAC 2-8-13</u>, <u>326 IAC 2-8-18</u>, and <u>326 IAC 2-12-1</u>, concerning legal notice provisions for permits issued under the New Source Review (NSR) and Title V permit programs. Effective 30 days after filing with the Publisher.

HISTORY

First Notice of Comment Period: September 6, 2017, Indiana Register (DIN: 20170906-IR-326170395FNA). Second Notice of Comment Period: April 18, 2018, Indiana Register (DIN: 20180418-IR-326170395FNA). Notice of First Hearing: April 18, 2018, Indiana Register (DIN: 20180418-IR-326170395FNA).

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Notice of Second Hearing: October 3, 2018, Indiana Register (DIN: <u>20181003-IR-326170395PHA</u>). Date of Second Hearing: November 14, 2018.

326 IAC 2-1.1-6; 326 IAC 2-7-13; 326 IAC 2-7-17; 326 IAC 2-8-13; 326 IAC 2-8-18; 326 IAC 2-12-1

SECTION 1. 326 IAC 2-1.1-6 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-1.1-6 Public notice

Authority: IC 13-14-8; IC 13-15-2; IC 13-15-3-1; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15-5-3; IC 13-17

- Sec. 6. (a) Registrations, permits, modification approvals, and operating permit revisions issued under this article shall be **are** subject to the following public notice requirements, except as otherwise required in this article. The commissioner shall notify the public of the opportunity to comment on the proposed approval or denial of the registration, permit, modification approval, or operating permit revision as follows:
 - (1) The commissioner shall do the following:
 - (A) Provide notice of the receipt of a permit or operating permit revision application to the following:
 - (i) The county executive of a county that is affected by the permit application.
 - (ii) The executive of a city that is affected by the permit application.
 - (iii) The executive of a town council of a town that is affected by the permit application.

The commissioner may require a person who submits an application to provide information on the application necessary for the commissioner to implement this subdivision.

- (B) Publish a notice requesting comment on the proposed permit or permit revision approval or denial in a newspaper of general circulation in the area where the source or emissions unit is located. on the department website.
- (C) Provide electronic access to the draft permit on the department website for the duration of the public comment period.
- (C) (D) Provide a document supporting the proposed permit or permit revision for public inspection in the offices of the local air pollution control agency or the local health commissioner.
- (D) (E) Allow a period of at least thirty (30) calendar days opportunity for public comment.
- (2) The commissioner may allow opportunity for a public hearing unless otherwise noted.
- (3) The commissioner shall provide notice of the commissioner's issuance or denial to those parties listed in <u>IC</u> <u>13-15-5-3</u>(c).
- (b) The following approvals and operating permit revisions shall are not be subject to the public notice requirements of this section:
 - (1) Registrations issued under 326 IAC 2-5.1-2.
 - (2) Administrative amendment operating permit revisions under 326 IAC 2-6.1-6(d).
 - (3) Administrative amendments under 326 IAC 2-7-11 and 326 IAC 2-8-10.
 - (4) A determination by the commissioner that a source is exempt from the requirements of this article.
 - (5) A minor permit revision or modification approval under the following:

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- (A) 326 IAC 2-6.1-6(g).
- (B) <u>326 IAC 2-7-10.5(e)</u>.
- (C) 326 IAC 2-8-11.1(d).
- (c) Within ten (10) days of the submission of an application, each applicant shall place a copy of the permit application or operating permit revision application for public review at a library in the county where the construction or modification is proposed. Each applicant shall notify the commissioner of the location of the library where the copy of the application was placed.
- (d) Any person applying for a permit upon land that is either undeveloped or for which a valid existing permit has not been issued shall make, not more than ten (10) working days after submitting the permit application, a reasonable effort to provide notice to all owners or occupants of land adjoining the land that is the subject of the application. Each applicant shall pay the cost of compliance with this subsection. The notice shall: must:
 - (1) be in writing; and
 - (2) include:
 - (A) the date on which the application was submitted; and
 - (B) a brief description of the subject of the application.
- (e) Upon written request to the commissioner, a person may be included on a list of persons to receive notification of public comment periods, issuances, or denials.

(Air Pollution Control Division; <u>326 IAC 2-1.1-6</u>; filed Nov 25, 1998, 12:13 p.m.: 22 IR 990; errata filed May 12, 1999, 11:23 a.m.: 22 IR 3105; errata filed Jul 23, 2007, 4:19 p.m.: <u>20070815-IR-326070466ACA</u>; filed Feb 6, 2012, 2:54 p.m.: <u>20120307-IR-326090493FRA</u>; errata filed Jan 2, 2013, 2:19 p.m.: <u>20130123-IR-326130002ACA</u>; filed Mar 18, 2019, 2:36 p.m.: <u>20190417-IR-326170395FRA</u>)

SECTION 2. 326 IAC 2-7-13 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-13 General permits

Authority: <u>IC 13-14-8</u>; <u>IC 13-15-2</u>; <u>IC 13-17-3-4</u>; <u>IC 13-17-3-11</u>

Affected: IC 13-15; IC 13-17

Sec. 13. (a) A general permit may be issued subject to the following conditions:

- (1) A Part 70 general permit shall must comply with all requirements applicable to other Part 70 permits and shall must identify criteria by which sources may qualify for the general permit.
- (2) The commissioner may, after complying with notice and opportunity for public participation provided under section 17 of this rule, issue a general permit covering numerous similar sources. In providing an opportunity for public comment, the commissioner shall make a reasonable attempt to publish notice in newspapers in general circulation in those areas of the state in which sources that would qualify for coverage under the permit are believed to be located. on the department website.
- (3) General permits must be provided for public review through electronic access on the department website for the duration of the public comment period.
- (3) (4) General permits shall must not be authorized for affected sources under the acid rain program unless otherwise provided in regulations promulgated under Title IV of the CAA.
- (b) For individual sources and source modifications to obtain general permit coverage, an applicant must do shall complete the following:
 - (1) Apply to the commissioner for coverage by the general permit under the terms of the general permit or apply for a Part 70 permit consistent with section 4 of this rule. The commissioner may provide, in the general permit, for applications which that deviate from the requirements of section 4 of this rule, provided that such the applications meet the requirements of Title V of the CAA, and include all information necessary to determine qualification for, and assure ensure compliance with, the general permit.
 - (2) Request authorization to operate under a general permit and meet the conditions and terms of the general permit. The commissioner shall grant authorization to operate subject to the terms and conditions of the general permit. The notice provisions of section 17 of this rule are not applicable to a grant by the commissioner of a source's request for authorization to operate under a general permit and such a the grant shall must not be a final action for purposes of judicial review.
 - (3) Notwithstanding the shield provisions of section 15 of this rule, a source which that requests and is granted

authority to operate under a general permit shall be is subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit.

(4) General permits may be issued for modifications of existing sources.

(Air Pollution Control Division; <u>326 IAC 2-7-13</u>; filed May 25, 1994, 11:00 a.m.: 17 IR 2264; filed Mar 18, 2019, 2:36 p.m.: <u>20190417-IR-326170395FRA</u>)

SECTION 3. 326 IAC 2-7-17 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-7-17 Public participation and notice to affected states

Authority: IC 13-14-8; IC 13-15; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15-5-3

Sec. 17. (a) Any person applying for a Part 70 permit upon land that is either undeveloped or for which a valid existing permit has not been issued shall, not more than ten (10) working days after submitting the Part 70 permit application, make a reasonable effort to provide notice to all owners or occupants of land adjoining the land that is the subject of the application. Each applicant shall pay the cost of compliance with this requirement. The notice shall: must:

- (1) be in writing; and
- (2) include:
 - (A) the date on which the application was submitted; and
 - (B) a brief description of the subject of the application.
- (b) Each applicant for a Part 70 permit shall do complete the following:
- (1) Place a copy of the permit application, permit modification application, and any additional information submitted to the department for public review at a library in the county where the source is located or will be located not later than ten (10) days after submitting the permit application, permit modification application, or additional information to the department.
- (2) Provide the commissioner with the location of the library where the copy may be found.
- (3) Comply with the requirements of subdivisions (1) and (2) when providing any additional material regarding the application to the department.
- (4) The applicant may remove the Part 70 permit application and related information previously placed at the public library anytime not earlier than sixty (60) days after the final Part 70 permit has become effective.
- (c) All Part 70 permit proceedings, including initial Part 70 permit issuance, significant modifications, minor permit modifications, and renewals, shall must provide adequate procedures for public notice, including offering an opportunity for public comment and a hearing on the draft Part 70 permit as follows:
 - (1) Prior to issuing a Part 70 permit, the draft permit shall must be available for review in the following manner:
 - (A) The commissioner shall notify the public of the draft Part 70 permit as follows:
 - (i) By publication in a newspaper of general circulation in the area where the source is located of a notice on the department website or in a state publication designed to give general public notice.
 - (ii) To persons on a mailing list developed by the commissioner, including those who request in writing to be on the list.
 - (iii) By other means if necessary to assure ensure adequate notice to the affected public.
 - (B) The draft permit must be provided for public review through electronic access on the department website for the duration of the public comment period.
 - (B) (C) The notice shall must identify the following:
 - (i) The affected facility.
 - (ii) The name and address of the permittee.
 - (iii) The name and address of the commissioner processing a Part 70 permit.
 - (iv) The activity or activities involved in a Part 70 permit action and information sufficient to notify the public as to the emissions implications of those activities.
 - (v) The emissions change involved in any Part 70 permit modification.
 - (vi) The name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of a Part 70 permit draft, the application, all relevant supporting materials, and all other materials available to the commissioner that are relevant to a Part 70 permit decision.
 - (C) (D) The notice shall must include the following:
 - (i) Notification of receipt of the permit application.

- (ii) The commissioner's draft approval of the permit application.
- (iii) Notification to the public of the following:
- (AA) At least a thirty (30) day period for submitting written comments to the commissioner and a brief description of the comment procedures required by this section.
- (BB) The opportunity for a public hearing including a statement of procedures to request a hearing (unless a hearing has already been scheduled) for consideration of the permit application. Notification including the time and place of any hearing that may be held shall must be given at least thirty (30) days in advance of the hearing if such a the hearing has been scheduled.
- (CC) That a copy of the application and commissioner's analysis thereof are available for inspection at the library designated in subsection (b).
- (2) A copy of the notice provided under subdivision (1) shall **must** also be provided to the appropriate federal, state, or local agency.
- (3) The commissioner shall do the following:
 - (A) Provide notice and opportunity for participation by affected states. Except as otherwise waived by the U.S. EPA, the commissioner shall give notice of each draft permit to any affected state on or before the time that the commissioner provides notice to the public under this section, except to the extent that section 12(b) and 12(c) of this rule requires timing of the notice to be different.
 - (B) Keep a record of the commenters and also of the issues raised during the public participation process so that the U.S. EPA may fulfill its obligation under Section 505(b)(2) of the CAA to determine whether a citizen petition may be granted. The records shall **must** be available to the public.
 - (C) Prepare a written response to comments that shall must be available to the public at the time a proposed permit is submitted to the U.S. EPA.
- (4) Notification, in writing, of the final determination shall must be:
 - (A) given according to IC 13-15-5-3; and
 - (B) made available for public inspection at the public library identified in subsection (b)(2).
- (5) A permit may be denied by the commissioner on the basis of adverse comment if the comment demonstrates the following:
 - (A) The ambient air quality standards under <u>326 IAC 1-3</u> cannot be attained or maintained if a permit is issued.
 - (B) The prevention of significant deterioration requirements under 326 IAC 2-2 will not be met.
 - (C) The offset requirements under <u>326 IAC 2-3</u> will not be satisfied.
 - (D) For any other reason such as, but not limited to, interference with attainment and maintenance of the standards under 326 IAC 12.

(Air Pollution Control Division; <u>326 IAC 2-7-17</u>; filed May 25, 1994, 11:00 a.m.: 17 IR 2266; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2348; filed Feb 6, 2012, 2:54 p.m.: <u>20120307-IR-326090493FRA</u>; filed Mar 18, 2019, 2:36 p.m.: <u>20190417-IR-326170395FRA</u>)

SECTION 4. 326 IAC 2-8-13 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-8-13 Public notice

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15-5-3; IC 13-17

Sec. 13. (a) Any person applying for a FESOP upon land which that is either undeveloped or for which a valid existing permit has not been issued shall, not more than ten (10) working days after submitting the FESOP application, make a reasonable effort to provide notice to all owners or occupants of land adjoining the land which that is the subject of the application. Each applicant shall pay the cost of compliance with this requirement. The notice shall must be in writing and include the date on which the application was submitted and a brief description of the subject of the application.

- (b) Each applicant for a FESOP shall do complete the following:
- (1) Place a copy of the permit application or permit modification application, and any information submitted to the department for public review at a library in the county where the source is or will be located not later than ten (10) days after submitting the permit application, permit modification application, or additional information to the department.
- (2) Provide the commissioner with the location of the library where the copy may be found.
- (3) Comply with the requirements of subdivisions (1) and (2) when providing any additional material regarding the application to the department.

- (4) The applicant may remove the FESOP application and related information previously placed at the public library anytime not earlier than sixty (60) days after the final FESOP has become effective.
- (c) Prior to issuing a FESOP, the draft permit shall must be available for review in the following manner:
- (1) The commissioner shall notify the public of the draft FESOP by publishing in a minimum of one (1) newspaper of general circulation in the county where the source is located, a notice which on the department website that includes the following:
 - (A) Notification of receipt of the permit application.
 - (B) The commissioner's draft approval of the permit application.
 - (C) Notification to the public of at least a thirty (30) day period for submitting written comments to the commissioner.
 - (D) Notification to the public of the opportunity for a public hearing for consideration of the permit application or notice of such a hearing if one has been scheduled.
 - (E) Notification to the public that a copy of the application and commissioner's analysis thereof are available for inspection in a convenient public office building in the area where the source is located.
- (2) The draft permit must be provided for public review through electronic access on the department website for the duration of the public comment period.
- (2) (3) A copy of the notice provided under subdivision (1) shall must also be provided to the appropriate federal, state, or local agency.
- (3) (4) All comments received during the public comment period shall must be considered by the commissioner before the commissioner finally approves or disapproves the permit.
- (4) (5) There shall must be an opportunity for a public hearing if deemed necessary by the commissioner.
- (5) (6) Notification in writing of the final determination shall must be given according to IC 13-15-5-3, and such notification shall must be made available for public inspection in the same public office buildings to be notified under subdivision (1)(E).
- (6) (7) A permit may be denied by the commissioner on the basis of adverse comment if the comment demonstrates the following:
 - (A) The ambient air quality standards under <u>326 IAC 1-3</u> cannot be attained or maintained if a permit is issued.
 - (B) The prevention of significant deterioration requirements under 326 IAC 2-2 will not be met.
 - (C) The offset requirements under 326 IAC 2-3 will not be satisfied.
 - (D) For any other reason such as, but not limited to, interference with attainment and maintenance of the standards under <u>326 IAC 12</u>.
- (7) (8) The commissioner may impose such conditions on the permit as necessary to ensure that the following:
 - (A) The source or facility will comply with all applicable rules. and that the
 - (B) Attainment and maintenance of the following:
 - (i) Ambient air quality standards established under 326 IAC 1-3. the
 - (ii) Prevention of significant deterioration standards established under 326 IAC 2-2, and the
 - (iii) Offset requirements established under 326 IAC 2-3. will be attained and maintained and that the
 - **(C)** Public health will be protected.

(Air Pollution Control Division; <u>326 IAC 2-8-13</u>; filed May 25, 1994, 11:00 a.m.: 17 IR 2278; errata filed May 25, 1994, 11:10 a.m.: 17 IR 2358; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2361; filed Mar 18, 2019, 2:36 p.m.: 20190417-IR-326170395FRA)

SECTION 5. 326 IAC 2-8-18 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-8-18 FESOP general permits

Authority: <u>IC 13-14-8</u>; <u>IC 13-17</u> Affected: <u>IC 13-15</u>; <u>IC 13-16-2-1</u>

Sec. 18. (a) A FESOP general permit may be issued subject to the following conditions:

- (1) A FESOP general permit shall: must:
 - (A) comply with all requirements applicable to FESOPs under this rule; and
 - (B) identify criteria by which sources may qualify for the FESOP general permit.
- (2) A FESOP general permit shall **must** include operating conditions that shall apply to any source operating under the FESOP general permit.

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(3) The commissioner may, after complying with the notice and opportunity for public participation provided

under section 13 of this rule, issue a FESOP general permit covering numerous similar sources. In providing an opportunity for public comment, the commissioner shall publish notice as follows:

- (A) In newspapers of general circulation in those areas of the state in which sources that would qualify for coverage under the permit are believed to be located. On the department website.
- (B) In the Indiana Register.
- (4) A FESOP general permit must be provided for public review through electronic access on the department website for the duration of the public comment period.
- (b) For individual sources that wish to obtain FESOP general permit coverage, an applicant shall must do the following:
 - (1) Apply to the department for coverage by the FESOP general permit under the terms of the FESOP general permit or apply for a FESOP consistent with section 3 of this rule. The department may provide, in the FESOP general permit, for applications that deviate from the requirements of section 3 of this rule, provided that the applications include all information necessary to determine qualification for, and assure ensure compliance with, the FESOP general permit.
 - (2) Request authorization to operate under a FESOP general permit and meet the conditions and terms of the FESOP general permit. The notice provisions of section 13 of this rule are not applicable to a grant by the commissioner of a source's request for authorization to operate under a FESOP general permit.
 - (3) Upon billing, submit an application fee in accordance with 326 IAC 2-1.1-7(f)(1). A source operating under a FESOP general permit issued under this section shall pay an annual operating fee in accordance with 326 IAC 2-1.1-7(f)(2). If an annual fee is being paid under a payment schedule established under IC 13-16-2-1, the fee shall must be paid according to that schedule. Establishment of a fee payment schedule must be consistent with the provisions of IC 13-16-2-1, including the determination that:
 - (A) a single payment of the entire fee is an undue hardship on the person; and
 - (B) the department is not required to assess installments separately.
- (c) A source that requests and is granted authority to operate under a FESOP general permit shall be is subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the FESOP general permit.
 - (d) General permits may be issued for modifications of existing sources.

(Air Pollution Control Division; <u>326 IAC 2-8-18</u>; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2363; errata filed Jul 23, 2007, 4:19 p.m.: <u>20070815-IR-326070466ACA</u>; filed Sep 28, 2011, 10:56 a.m.: <u>20111026-IR-326070286FRA</u>; filed Mar 18, 2019, 2:36 p.m.: <u>20190417-IR-326170395FRA</u>)

SECTION 6. 326 IAC 2-12-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-12-1 General permit issuance

Authority: IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

Affected: <u>IC 4-21.5</u>; <u>IC 13-15</u>; <u>IC 13-17</u>

- Sec. 1. (a) This rule does not apply to permits issued under <u>326 IAC 2-7</u> or <u>326 IAC 2-8</u>. The commissioner may establish a general permit for a class of emission units, processes, operations, or sources in accordance with the following conditions:
 - (1) A general permit shall: must:

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- (A) comply with all requirements applicable to operating permits under this article; and
- (B) identify criteria by which a source may qualify for the general permit.
- (2) A general permit shall must include the following:
 - (A) Operating conditions with which any source operating under the general permit will comply.
 - (B) Identification of all applicable requirements.
 - (C) Terms and conditions, including monitoring, testing, reporting, record keeping requirements, and other actions to demonstrate compliance with all applicable requirements under this title and the CAA.
- (3) A general permit may include terms and conditions that limit source emissions below the applicability thresholds for applicable requirements under this title.
- (4) A general permit shall must not be issued for a new source or modification subject to the requirements of 326 IAC 2-2, 326 IAC 2-3, or 326 IAC 2-4.1.

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(5) The commissioner shall comply with the following provisions for notice and opportunity for public

participation:

- (A) Prior to establishing a general permit, the commissioner shall provide an opportunity for public comment by publishing a legal notice that includes the following:
- (i) A description of the types of sources, processes, emission units, and pollutants to be covered by the general permit.
- (ii) Electronic access to the draft general permit on the department website for the duration of the public comment period.
- (ii) (iii) Notification to the public of the following:
- (AA) A thirty (30) day period for submitting written comments to the commissioner.
- (BB) The opportunity for a public hearing for consideration of the general permit or notice of such a hearing if one has been scheduled.
- (CC) A copy of the general permit and any technical support documents are available upon request.
- (B) The legal notice shall must be published as follows:
- (i) In newspapers of general circulation in a minimum of twelve (12) locations throughout the state. On the department website.
- (ii) In the Indiana Register.
- (b) The commissioner may issue a general permit to an emission unit, process, operation, or source within the class of emission units, processes, operations, or sources for which a general permit was established. An applicant for a general permit shall do **complete** the following:
 - (1) Apply to the commissioner for coverage by the general permit under terms of the general permit or submit an application for a general permit under this section. The application for a general permit shall must include all information necessary to determine qualification for, and assure ensure compliance with, the general permit.
 - (2) Request authorization to operate under a general permit and meet the conditions and terms of the general permit. The commissioner may grant authorization to operate subject to the terms and conditions of the general permit.
 - (3) The notice provisions of <u>326 IAC 2-1.1-6</u> are not applicable to a decision by the commissioner on a source's request for authorization to operate under a general permit. This subdivision is not intended to affect applicability of <u>IC 4-21.5</u>.
 - (4) Upon billing, submit an application fee in accordance with 326 IAC 2-1.1-7(k).
 - (5) Pay an annual operating fee in accordance with 326 IAC 2-1.1-7(k). Fees shall must be paid:
 - (A) by mail or in person; and
 - (B) upon billing by check or money order, payable to "Cashier, Indiana Department of Environmental Management" no later than thirty (30) calendar days after receipt of billing.

Nonpayment shall result results in revocation of the permit.

(c) The commissioner shall not issue more than two (2) general permits to any one (1) source in any twelve (12) month period.

(Air Pollution Control Division; <u>326 IAC 2-12-1</u>; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1063; filed Sep 28, 2011, 10:56 a.m.: <u>20111026-IR-326070286FRA</u>; filed Mar 18, 2019, 2:36 p.m.: <u>20190417-IR-326170395FRA</u>)

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